COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Pricing, based upon Total Element Long-Run Incremental Costs, for Unbundled Network Elements and Combinations of Unbundled Network Elements, and the Appropriate Avoided Cost Discount for Verizon New England, Inc. d/b/a Verizon Massachusetts' Resale Services in the Commonwealth of Massachusetts	**D.T.E. 01-20**

MOTION FOR RECONSIDERATION OF
CONVERSENT COMMUNICATIONS OF MASSACHUSETTS, LLC

Pursuant to 220 C.M.R. § 1.11(10), Conversent Communications of Massachusetts, LLC hereby submits its Motion for Reconsideration of the Department of Telecommunications and Energy's ("Department") stamp approval of Verizon's July 16, 2003 compliance filing in the above-captioned matter.

I. INTRODUCTION

Verizon's July 16, 2003 compliance filing actually follows a June 12, 2003 re-compliance filing in which Verizon proposed tariff changes to implement its alternative hot cut process, the Wholesale Provisioning Tracking System ("WPTS"), pending the Department's subsequent investigation of that new process. As the Department knows, Verizon included rates for the WPTS process along with rates for the existing manual hot cut process that would have applied, if approved, on a going-forward basis. The Department rejected Verizon's July 12 re-compliance filing and referred to an earlier order in this case, in which the Department had indicated that "Verizon could not implement and charge for its alternative hot cut process until the Department completed a thorough investigation of the WPTS process and its costs."[1] The Department emphasized that it had previously ruled that "Verizon may not charge the new rates for its

manual hot cut process until the Department has completed its review of the WPTS process" (citing the Reconsideration Order at 146). In rejecting Verizon's July 12 re-compliance filing, the Department made clear that Verizon's proposed tariff provisions putting into effect the WPTS process (and rates) and the new rates for the manual process failed to comply with these directives and directed Verizon to file revised tariff pages that do in fact comply with the earlier directives.[2]

In its July 16, 2003 compliance filing, Verizon "(1) eliminated reference to hot cut options 1 and 2 in Part B, Section 2.5; (2) eliminated nonrecurring rate elements for hot cut options 1 and 2 throughout Part M, Section 1;" (3) stated in its filing letter that Verizon will apply the Department approved nonrecurring charges for loops to hot cuts, including service orders, central office wiring, and provisioning rate elements, pending that investigation or otherwise ordered by the Department; and (4) filed tariff pages that appear to permit Verizon to charge CLECs for hot cuts *retroactively* (to August 5, 2002) at the new Department approved rates for new loops. The only apparent reason that Verizon gives for proposing for the first time in this proceeding to charge the new rates for new links to hot cuts is the assertion that because it "must change its billing systems to incorporate the rate-structure changes approved by the Department for nonrecurring charges, it must apply the new rate structure for hot cuts. The billing system cannot accommodate both the new rate structure for nonrecurring charges for new links and a separate rate structure for hot cuts."

II. STANDARD OF REVIEW

---

1 July 14, 2003 Letter Order at 7.

2 The Department had made a number of previous directives to Verizon in this proceeding including that "with respect to the tariff pages for this alternative hot cut process, Verizon should submit illustrative pages without an effective date" (February 12, 2003 Letter Order at 2,3); (2) that Verizon would not be permitted to retroactively charge for coordinated hot cuts (July 30, 2003 Extension Order at 14, 17); and (3) that "Verizon's new hot cut rates will not go into effect until the alternative hot cut process, based on the SBC frame due time process is operating to our satisfaction" (Reconsideration Order at 154).

The Department's Procedural Rule, 220 C.M.R. § 1.11(10), authorizes a party to file a motion for reconsideration of a final Department Order. The Department's policy on reconsideration is well settled. Reconsideration of previously decided issues is granted only when extraordinary circumstances dictate that it take a fresh look at the record for the express purpose of substantively modifying a decision reached after review and deliberation. North Attleboro Gas Company, D.P.U. 94-130-B at 2 (1995); Boston Edison Company, D.P.U. 90-270-A at 2-3 (1991); Western Massachusetts Electric Company, D.P.U. 558-A at 2 (1987).

A motion for reconsideration should bring to light previously unknown or undisclosed facts that would have a significant impact upon the decision already rendered. It should not attempt to reargue issues considered and decided in the main case. Commonwealth Electric Company, D.P.U. 92-3C-1A at 3-6 (1995); Boston Edison Company, D.P.U. 90-270-A at 3 (1991); Boston Edison Company, D.P.U. 1350-A at 4 (1983). The Department has denied reconsideration when the request rests on an issue or updated information presented for the first time in the motion for reconsideration. Western Massachusetts Electric Company, D.P.U. 85-270-C at 18-20 (1987); but see Western Massachusetts Electric Company, D.P.U. 86-280-A at 16-18 (1987). Alternatively, a motion for reconsideration may be based on the argument that the Department's treatment of an issue was the result of mistake or inadvertence. Massachusetts Electric Company, D.P.U. 90-261-B at 7 (1991); New England Telephone and Telegraph Company, D.P.U. 86-33-J at 2 (1989); Boston Edison Company, D.P.U. 1350-A at 5 (1983).

Clarification of previously issued Orders may be granted when an Order is silent as to the disposition of a specific issue requiring determination in the Order, or when the Order contains language that is sufficiently ambiguous to leave doubt as to its meaning. Boston Edison Company, D.P.U. 92-1A-B at 4 (1993); Whitinsville Water Company, D.P.U. 89-67-A at 1-2

(1989). Clarification does not involve reexamining the record for the purpose of substantively modifying a decision. Boston Edison Company, D.P.U. 90-335-A at 3 (1992), citing Fitchburg Gas & Electric Light Company, D.P.U. 18296/18297, at 2 (1976).

III. THE DEPARTMENT MUST RECONSIDER ITS STAMP APPROVAL OF VERIZON'S JULY 16, 2003 COMPLIANCE FILING

Verizon's July 16, 2003 compliance filing does not comply with previous DTE Orders pertaining to issues that have already been considered and decided. First, the Department did not direct Verizon to eliminate the references to hot cut options 1 and 2 in its compliance tariff, but rather directed Verizon to file tariff pages for hot cuts without an effective date.[3] It was a mistake for the Department to approve a tariff filing that eliminated references to hot cut options 1 and 2.

Second, the Department never authorized Verizon to charge CLECs for hot cuts at a new rate and it certainly did not authorize Verizon to bill new rates retroactively. The Department repeatedly has made it clear in this proceeding that no new rates for hot cuts would not go into effect until the Department has had an opportunity to review and approve the WPTS process and rates. Accordingly, Verizon has been obligated to bill and has been billing Conversent for hot cuts at the existing, applicable rate in its DTE 17 tariff before and after the Department's July 11, 2002 Order in this case. It was a mistake for the Department to approve Verizon's improper proposal, made for the first time in its July 16, 2003 compliance filing, to charge the recently approved rates for new links to hot cuts. It was also a mistake to approve tariff pages for these non-recurring charges that have an effective date of August 5, 2002.[4] Conversent has relied on

[3] February 12, 2003 Letter Order at 2,3.

[4] See, Part M Section 1, Page 3, Second Revision, Page 10.1, Original, Page 10.2, Original, Page 10.3, Original, Page 10.4, Original, Page 12.4, Original, Page 12.5, Original, Page 12.6, Original.

numerous DTE Orders which have repeatedly made clear there would be no retroactive application of rates for coordinated hot cuts until the process and rates for WPTS were approved.

Third, in order to comply with previous DTE orders, Verizon should have filed descriptions of hot cut options 1 and 2 in Part B, Section 2.5 and made clear that the nonrecurring rates for hot cut options 1 and 2 throughout Part M, Section 1 would be the same rates that Verizon is currently billing for hot cuts under DTE 17 until the DTE approves the WPTS process and rates in a subsequent proceeding. This is similar to what Verizon did in New York. In a New York TELRIC case, the Public Service Commission approved i.) new hot cut rates and ii.) Verizon's proposal to charge for new links separately from hot cuts, but prohibited such new hot cut rates from going into effect as the result of a settlement agreement in Verizon's Alternative Regulation Plan docket. Under the terms of the settlement agreement, Verizon agreed to charge a *flat rate* of no more than $35 for hot cuts during the life of the Alternative Regulation Plan. In its New York compliance filing, Verizon tariffed the approved TELRIC rates for hot cuts established by the Commission, but attached a clarifying footnote that the $35 flat rate for hot cuts would apply on an interim basis for as long as the Alternative Regulation Plan was in effect. A true and accurate copy of the relevant tariff pages in connection with Verizon-New York's nonrecurring charges for new two wire analog loops and two wire analog hot cuts is attached to this letter as Exhibit 1.

Conversent does not understand Verizon's assertion that its "billing system cannot accommodate both the new rate structure for nonrecurring charges for new links and a separate rate structure for hot cuts." This assertion appears to be Verizon's basis for seeking to charge the new rates for loops to hot cuts. In fact, the rate structure for new links and hot cuts is identical. There is a service order charge, a central office wiring charge, and a central office provisioning

charge for both new links and hot cuts. The only thing that is different is the rate. Thus, Conversent does not agree with Verizon's explanation for why it cannot continue to bill for hot cuts under its existing DTE 17 tariff. But even if Verizon were correct that the rate structures are different, it is still of course possible for Verizon to bill for hot cuts properly. One need only look at what Verizon is doing today in New York. That is, Verizon is billing CLECs the new rate for new links according to a rate structure that includes the following elements: (service order, central office wiring, central office provisioning) and a separate rate structure and rate (a flat fee of $35) for hot cuts. Accordingly, Conversent believes it was a mistake for the DTE to have approved Verizon's compliance filing if it made such a ruling on the basis that Verizon's billing system could not accommodate both the new rate structure for new links and hot cuts, as explained by Verizon for the first time in its July 16, 2003 compliance filing.

For the above reasons, Conversent urges the Department to reconsider its stamp approval of Verizon's July 16 compliance filing in accordance with the recommendations made herein.

Respectfully submitted,

Scott Sawyer
Vice President of Regulatory Affairs and Counsel
Conversent Communications of Massachusetts, LLC